

Response Under 37 CFR 1.116
Expedited Procedure
Examining Group 1794

Application No. 10/534,649

Paper Dated: March 23, 2010

In Reply to USPTO Correspondence of December 28, 2010

Attorney Docket No. 3135-051381

REMARKS

This Amendment is in response to the Office Action dated December 28, 2009 and marked “final.” Applicant hereby seeks to amend claim 16 to further define the separate passage openings as comprising pressure valves acting at different pressure levels. Support for this amendment can be found in claim 20 (concurrently cancelled) and originally-filed claim 5. Thus, this amendment does not attempt to add new matter. Claim 16 is the only independent claim pending. Applicant respectfully requests entry of the proposed amendment to claim 16 because it places the application in condition for allowance.

Claim Rejection Under 35 U.S.C. §102(b)

Claims stand rejected under 35 U.S.C. §102(b) for anticipation by U.S. Patent No. 4,013,798 to Goltsos. This rejection is respectfully traversed.

In Applicant’s previous Amendment (dated September 1, 2009) it was argued that Goltsos is distinguishable from the claimed package because the claimed package includes passage openings that differ from each other such that the pressure in the individual compartments is maximized at different pressure levels. Applicant explained that this pressure differentiation arrangement can be achieved by, *inter alia*, providing valves which activate at different pressures. (September 1, 2009 Amendment, page 5.)

The final Office Action responds to this argument by stating that the “features on which applicant relies (i.e., underpressure valves acting at different pressure levels and passage openings of different total areas) are not recited in the rejected claim(s).” (December 28, 2009 Office Action, page 5.) Applicant respectfully disagrees with this assessment of the scope of the claims. In particular, the “pressure valves acting at different pressure levels” was defined in claim 20, which depends from, and further limits, claim 16. Accordingly, this feature was part of the claims, though it was not part of independent claim 16. Applicant thus disagrees that the reasoning in the final Office Action adequately responds to Applicant’s argument presented in the September 1, 2009 Amendment and summarized above.

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Nonetheless, in an effort to advance this application toward allowance, Applicant hereby proposes to amend claim 16 so as to include the feature previously defined in claim 20. Thus, in claim 16 (as amended), the passage openings of the individual compartments which differ from each other such that overpressure in individual compartments is maximized at different pressure levels would comprise pressure valves acting at different pressure levels. Goltsoos does not teach or suggest a package meeting this definition.

Instead, the embodiment of Goltsoos cited by the Office Action (shown in Fig. 7 and described beginning with line 21 of column 5) includes water laden food-bearing compartments in which a notch is formed by the side wall and adjacent rim. These notches formed in the sidewall and rims of the container are not “valves” consistent with a fair interpretation of that term, nor is there any teaching or suggestion in Goltsoos that any of the notch arrangements operate at a pressure different from any other notch arrangement. The disclosure of Goltsoos related to this embodiment is particularly sparse in this regard. Nor is it fair to assume the size of the compartment dictates the maximum pressure achievable inside the compartment, as the tightness of the seal (dictated, in part, by the particulars of the notch) will ultimately determine when the compartment is vented. Thus, Goltsoos cannot constitute an anticipatory reference with respect to claim 16 or any of the claims depending therefrom.

Furthermore, Applicant continues to disagree with the statement in the Office Action that, in Goltsoos, “the entire covered compartment, including the vent notch [can be] considered to be an openable passage opening...[so that] each compartment shown in Figure 7 has differing passage openings.” (December 28, 2009 Office Action, pages 2-3.) This rationale was also presented, verbatim, in the June 9, 2009 Office Action on page 3. Applicant previously expressed his view that this interpretation of “passage openings” in Goltsoos is incorrect and inconsistent with the meaning of that term in the claims of the subject application. However, the proposed amendment to claim 16 would certainly resolve this issue. By amending claim 16, Applicant seeks to further define the passage openings of the claimed package as comprising pressure valves acting at different pressure levels. Goltsoos does not teach this feature as the

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covered compartment (including the vent notch) of Goltsos does not include a valve at all.

Claim 20 was previously rejected for anticipation by Goltsos, for the asserted reason that “the combination of the cover and the opening can be considered to be a pressure valve.” (December 28, 2009 Office Action, page 3.) Applicant disagrees with this reasoning for much the same reasons as are discussed above. Moreover, this explanation fails to account for the detail that, in the claimed package, the maximum pressure differs between the compartments. In Goltsos, assuming the pressure valve consists of the cover and the notch, there is nothing to suggest that the maximum pressure will vary between the compartments. Instead, the vented compartments all appear to share a commonly sized vent (represented by 32’). Commonly sized vents will likely rupture at the same pressure, meaning that the maximum pressure that can be achieved within the corresponding compartment will not vary between the compartments, irrespective of the dimensions of the compartment themselves.

Because the proposed amendment to claim 16 would define over Goltsos, Applicant respectfully requests that this amendment be entered and the rejection of claims 16-21 and 24-26 under 35 U.S.C. §102(b) be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §103(a)

Claims 19 and 22-23 stand rejected under 35 U.S.C. § 103(a) for obviousness over Goltsos in view of U.S. Patent No. 5,587,192 to Beizermann. This rejection is respectfully traversed.

The Office Action cites Beizermann as allegedly suggesting passage openings that are blocked prior to use and open under the influence of a determined temperature being exceeded (claim 19) and passage openings that are blocked by means of a cover element fixed with an adhesive layer wherein the adhesive layer softens at a predetermined temperature (claims 22 and 23). Beizermann does not, however, cure the deficiencies of Goltsos discussed above, and thus the pending claims are also patentable over the combination of Goltsos and Beizermann.

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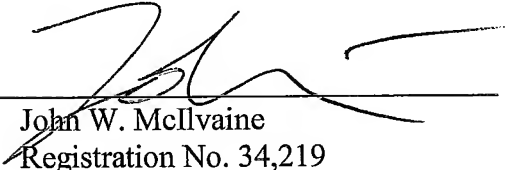
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CONCLUSION

For the foregoing reasons, Applicant submits that the amendment herein proposed to claim 16 should be entered because it places the application in condition for allowance. Accordingly, entry of the amendment, reconsideration of the outstanding rejections, and allowance of pending claims 16-19 and 21-26 are respectfully requested.

Respectfully submitted,
THE WEBB LAW FIRM

By _____


John W. McIlvaine
Registration No. 34,219
Attorney for Applicant
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com